West Texas Hotels, Inc., d/b/a Midland Hilton and Towers, a subsidiary of Medallion Hotels, Inc. *and* Delma Nunez. Case 16–CA–17901

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On December 27, 1996, Administrative Law Judge William N. Cates issued the attached bench decision. The Respondent filed exceptions and a supporting brief.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,[1] findings, and conclusions and to adopt the recommended Order.

We agree with the judge that employee Delma Nunez was engaged in protected concerted activity in relating to General Manager Daragh O'Neill and Associate Resources Director Sarah O'Neill employee complaints regarding the possible detrimental impact of the appointment of a husband-wife management team on the Respondent's ''open door'' policy for registering employee complaints. We note especially her credited testimony that several employees had spoken to her about the matter and the testimony of Maricela Armendariz, cited by the judge, that employees went to Nunez and relied on her to act as their liaison to management. Contrary to the Respondent's contention, an employee need not be expressly ''appointed'' or ''nominated'' as spokesperson in order for his or her actions to be found concerted.[2] In addition, we agree with the judge that the Respondent was aware of the concerted nature of Nunez' actions. Nunez as well as Daragh and Sarah O'Neill testified that in their March 4, 1996[3] meeting Nunez stated that both employees and supervisors had voiced concerns about the open door policy in view of the O'Neills' positions and relationship as spouses.

We find no merit in the Respondent's contention that Nunez' statements regarding the husband-wife management team were not protected because they involved the identity of supervisory personnel. Although action directed at causing a change in the management hierarchy may be unprotected as beyond the sphere of legitimate employee interest, such action is protected where the action in fact pertains to employee terms and conditions of employment. *Caterpillar, Inc*., 321 NLRB 1178, 1179–1180 (1996).[4] In the present case, we find, in agreement with the judge, that the concerns raised by employees and conveyed by Nunez regarding the appointment of Sarah O'Neill as director of the associate resources department pertained to terms and conditions of employment, particularly the continuation of the Respondent's open door policy.[5] The cases cited by the Respondent do not support its position. In *Dobbs Houses v. NLRB*, 325 F.2d 531 (5th Cir. 1963), the court held that the perceived dismissal of the assistant manager was a matter directly related to the employment of the waitresses because he acted as a buffer in their dealings with higher management. Although the court in *Dobbs Houses*, supra, denied enforcement to a Board decision and order which had found that the waitresses' protest of the supervisor's dismissal was protected activity, it did so not because the reason for the protest was unprotected but because, in the court's view, the means of their protest—a walkout during the dinner hour—was not a reasonable way to make known their concerns and was therefore

[1] The Respondent has excepted to the admission of certain testimony of witnesses Vicky Almy, Margaret Longoria, and Maricela Armendariz on the basis that it is hearsay. In the portions of Almy and Longoria's testimony cited by the Respondent, the witnesses stated that employees voiced concerns about the effect of the husband-wife management team on the Respondent's open door policy and the administration of a policy concerning the employment of relatives. We find that this testimony was relevant, and was relied on by the judge, for the fact that the statements were made by the employees, supporting the General Counsel's allegation that Nunez' activity was concerted, rather than for the truth of the concerns expressed, and thus does not constitute hearsay under Fed.R.Evid. 801(c). For the same reason, we find that Armendariz' testimony concerning her conversation with Daragh O'Neill about relatives working together was not hearsay. We note that the judge specifically considered her testimony regarding conversations with her brother about his request to work in the Respondent's cafe with her only as it demonstrated that the Respondent denied the request. To the extent that portions of the challenged testimony may constitute hearsay, we note that the Board has stated, ''Administrative agencies ordinarily do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifies.'' *Alvin J. Bart & Co*., 236 NLRB 242 (1978). Moreover, the Board will admit hearsay evidence ''if rationally probative in force and if corroborated by something more than the slightest amount of other evidence.'' *RJR Communications*, 248 NLRB 920, 921 (1980). The testimony that the Respondent's employees expressed their reservations about the new management team to one another and to Nunez is highly probative and was corroborated by a number of witnesses.

[2] See, e.g., *Amelio's*, 301 NLRB 182, 182 fn. 4 (1991).

[3] All dates are 1996.

[4] Member Higgins does not pass on whether he agrees with the majority in *Caterpillar*. In that case, the employees engaged in an ''in-plant'' action of using the slogan (Permanently replace Fytes) on T-shirts, tools, and other items. In the instant case, Nunez simply stated to management her concerns and those of her fellow employees. Under the *Oakes* test, infra, the means of protest may have been unreasonable in *Caterpillar*. It was clearly reasonable here.

[5] Chairman Gould agrees that this activity was protected, in accordance with the view stated in his concurring opinion in *Caterpillar*, supra, that an employee protest about management hierarchy is protected when the protest is related to employment conditions.

not protected. Here, Nunez clearly acted reasonably in conveying the employees' concerns to the O'Neills in the March 4 and 8 meetings.[6] *NLRB v. Oakes Machine Corp*., 897 F.2d 84, 89 (2d Cir. 1988), actually supports our position. The court held that the sending of a letter to the parent company suggesting that it reevaluate the appointment of the employer's president on the basis of alleged misconduct was protected activity because the specified misconduct, i.e., diversion of company resources to personal projects, affected profitability, which in turn determined employee bonuses.

We agree with the judge that the General Counsel demonstrated, in accordance with *Wright Line*,[7] that the Respondent violated Section 8(a)(1) by eliminating Nunez' position and discharging her. As discussed above, Nunez engaged in protected concerted activity by relating employee complaints about the husband-wife management team to the O'Neills. The O'Neills exhibited a clear resentment of Nunez' protected concerted activity, with Sarah O'Neill becoming upset when Nunez raised the matter of the husband-wife team and Daragh O'Neill threatening to discharge Nunez for insubordination if she mentioned the issue one more time. We find, in agreement with the judge, that the Respondent failed to show that it would have eliminated Nunez' position and discharged her on March 12 in the absence of her protected concerted activity. As found by the judge, the timing of the action strongly suggests that it was motivated by Nunez' activities. This finding is particularly compelling in view of corroborated testimony that, upon his arrival at the hotel, Daragh O'Neill announced that the year's budget had been approved and all positions were safe. In addition, although the Respondent argues in its exceptions that the decision was based on an overlap between Nunez' duties and those of the director, as well as Nunez' salary in relation to the lower-paid assistant, we note that no one else at the hotel, including Sarah O'Neill, possessed the necessary training in the staffing and placement system mandated by the Respondent's corporate parent, and that Daragh O'Neill did not state, either at the time of the Respondent's action or in his testimony at the hearing, that Nunez' salary was a consideration.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, West Texas Hotels, Inc., d/b/a Midland Hilton and Towers, a subsidiary of Medallion Hotels, Inc., Midland, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Edward B. Valverde, Esq., for the General Counsel.
Bruce A. Griggs, Esq. and *Ron Chapman, Esq. (Strasburger & Price, L.L.P.)*, for the Company.

BENCH DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is a wrongful discharge case. At the close of a 2-day trial in Odessa, Texas, on December 5, 1996, I rendered a Bench Decision, in favor of the General Counsel (Government) thereby finding a violation of 29 U.S.C. § 158(a)(1). This certification of that Bench Decision, along with the Order, which appears below, triggers the time period for filing an appeal (Exceptions) to the National Labor Relations Board. I rendered the Bench Decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations.

For reasons stated by me on the record at the close of the trial, and by virtue of the prima facie case established by the Government, a case not credibly rebutted by West Texas Hotels, Inc., d/b/a Midland Hilton and Towers, a subsidiary of Medallion Hotels, Inc. (the Company), l found the Company violated Section 8(a)(1) of the National Labor Relations Act (the Act) when, on March 12, 1996, it terminated its employee Delma Nunez (Nunez) because she engaged in concerted protected activities rather than that her position with the Company was eliminated based upon economic considerations. In so doing, I concluded the Company failed to demonstrate, by a preponderance of credited evidence, that it would have terminated Nunez and/or eliminated her job position even in the absence of any concerted protected conduct on her part. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *Transportation Management Corp*., 462 U.S. 393 (1983). I order that the Company past a ''Notice to Employees,'' reinstate Nunez, clear her record of the unlawful discharge, and make her whole with interest.

I certify the accuracy of the portion of the transcript, as corrected, pages 280 to 293 containing my decision, and I attach a copy of that portion of the transcript, as corrected, as ''Appendix A.''

CONCLUSIONS OF LAW

Based on the record, I find the Company is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act, that it violated the Act in the particulars and for the reasons stated at trial and summarized above; and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[6] The Board has never acquiesced in the view that a walkout is necessarily an ''unreasonable'' means of protesting the removal or the hire of a supervisor when the supervisor's tenure has an effect on the employees' terms and conditions of employment. We distinguish the Fifth Circuit's decision in *Dobbs Houses* only because review of our decision might be sought in that circuit, where the case arises.

[7] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

Having found the Company discriminatorily discharged its employee Delma Nunez, I shall recommend she, within 14 days from the date of this Order, be offered full reinstatement to her former job, or if that job no longer exists to a substantially equivalent position, without prejudice to her seniority, or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings or other benefits suffered as a result of the discrimination against her with interest. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plust interest as coputed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I also recommend that the Company, within 14 days from the date of this Order, be ordered to remove from its files any reference to Nunez' unlawful discharge and, within 3 days thereafter, notify Nunez in writing that this has been done and that the discharge will not be used against her in anyway. Finally, I recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate notice to employees, copies in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

On these conclusions of law, and on the entire record, I issue the following recommended[1]

ORDER

The Company, West Texas Hotels, Inc., d/b/a Midland Hilton and Towers, a subsidiary of Medallion Hotels, Inc., Midland, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order offer Delma Nunez full reinstatement to her former job or, if that job no longer exists to a substantial equivalent job without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days of this Order remove from its files any reference to her unlawful discharge and within 3 days thereafter notify Delma Nunez in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Midland, Texas hotel, copies of the attached notice marked ''Appendix B.''[2] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

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JUDGE CATES: I have provided the parties an opportunity to settle during the break period, and it is my understanding That no settlement has been arrived at.

And during the break I have gone out and prepared some notes to render the decision. But let me state first that it has been a pleasure to be in Odessa, Texas. The people herehave been very gracious to us; the Court facility and the like.

And let me also compliment counsel for both sides. All Three of you have done a remarkably good job and it has been my pleasure to hear the case, because I have had to do nothing other than sit back and listen to the testimony. If you'll recall, I have asked few if any questions at all during the entire trial.

And that's always a mark of good counsel, when you're able to do that. So I commend all three of you; you are a real credit to the position and the parties that you represent. Regardless of the outcome of the case, it may not be blamed on counsel in any way from either side.

I am persuaded, in this case, that all of the witnesses perhaps believe that they are telling the truth for the most part. But I have observed the witnesses' demeanor as they have testified, and from that I have tried to

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glean what I believe to be the credited facts in this case.

And so the facts that I will touch on briefly and outline for you, I have credited those facts, and if there are facts inthe record to the contrary, I have elected not to credit those; and it has been based primarily on demeanor. I have looked to whether there was corroboration or other matters.

Now, before I announce my full decision, let me tell you what I am not addressing. And there should be no inference even drawn from what I decide, that I am addressing the following matters.

I am not addressing the wisdom of husband and wife management teams, in this or any other business. I am not addressing the wisdom of employing various members of the same family at the same facility. And I am not addressing whether Nunez is a capable employee, because the parties stipulated that she was. So those are points that I am not addressing.

I find that the charge in this case was filed on March 20, 1996, and was served in a timely manner on the hotel, or the Company herein, and I shall refer to the Respondent throughout as either the hotel or the Company.

I shall refer to counsel for the General Counsel as the Government.

I find that at all times material herein, the Company is a Texas corporation with an office and place of business in Midland, Texas, where it is engaged in the operation of a hotel

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providing food and lodging.

I further find that during the twelve months preceding the issuance of the Complaint herein, the hotel in conducting its business operations derived gross revenues in excess of $500,000, and purchased and received at its Midland, Texas facility goods valued in excess of $50,000 directly from pointsoutside the State of Texas.

I find that at all times material herein, the hotel is and has been an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

I find that at all times material herein, general manager O'Neill, associate resource director O'Neill, and at applicable times, supervisor Almy, were supervisors and agents of the Company within the meaning of Section 2(11) and 2(13) of the Act.

All of those items were pled in the Complaint, and admitted by the parties. I also find that Delma Nunez voiced certain complaints to the Company on March 4 and March 8, 1996. I do that not only based on the evidence that was presented, but the answer of the Company admitted that such took place; the Company however did not in making that admission, admit that the complaint involved wages, hours and working conditions.

I further find that on or about March 12, 1996, Delmal Nunez's [sic] position of coordinator in the associate resources department was eliminated, and hence her job was eliminated and

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she at that point was terminated.

Now, we come down to the real crux of the case. Theissue—the broad issue is, was Nunez's [sic] employment severed because she engaged in concerted, protected activity; or was she discharged as a result of cost-saving factors implemented by the Company.

Now, I'm coming back to speak more to the concerted, protected activity issue later.

As in all cases of alleged discriminations turning on motivation, *Wright Line*, spelled W-R-I-G-H-T, second word, L-I-N-E, reported at 251 NLRB 1083 (1980) provides an analytical mode and determines the allocation of burdens of persuasion.

In this case, the Government has the burden of persuasion that concerted, protected activity was a substantial ormotivating factor in the hotel's decision to eliminate the coordinator's position in the associates resources department, which position the charging party herein occupied.

To meet its burden of persuasion, the Government must showat least the following: That Nunez engaged in concerted activity; that the concerted activity was protected; that the hotel knew of her concerted, protected activity; and that the adverse action taken against her was motivated at least in partby her having engaged in concerted, protected activity.

First, did Nunez engaged in concerted activity that was protected by the Act. I am persuaded she did, for the following

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reasons:

At the March 4 meeting, which may be referred to as the luncheon meeting, and is more fully described in the record than I will describe it, Nunez voiced to the O'Neills, that employees and managers—and I'm not terribly concerned about managers—had complained about this husband and wife management team, particularly with the wife being the associate resources director, and the husband being the general manager of the hotel, and what such would do or impact upon the hotel's open door policy.

Secondly, we have the March 8 meetings, and particularly I guess in the meeting in which the associate survey results were discussed, a question came up—and the comment was made, how could they make judgments about employee handbook rules, employee violations, employee complaints—when they were a husband and wife team?

Later that afternoon, Nunez is called to General Manager O'Neill's office, —where General Manager O'Neill has each of the managers that are present at that time come and state that they did in fact support Ms. O'Neill. The results of that survey doesn't surprise me, under the conditions under which it was taken.

And then General Manager O'Neill expressed to Nunez that he has listened to her complaints two or three times now. She continues to voice her complaints.

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And that it was concerted, that her action was concerted is based upon a number of factors, for example the testimony of Almy—I think she was the front office manager at the time—said she spoke with her supervisors, or her supervisors spoke with her about what they could tell their employees as towhether they could still go down to the associate resources office and engage in the open-door policy, in light of the fact that the general manager and the associate resources director were married.

Certain employees which Almy identified, such as Hold and Robertson, expressed concern to the effect that they were not going to go down there any more, and Almy testified about Mary Berry telling her that she didn't think, in essence, that she'd be going down to the associate resources office any more.

Former associate resources department employee Longoria testified that managers, supervisors and employees came to the associate resources department with concerns about the husband and wife management team, and she further testified

that at the March 8 meeting that morning, that associate resource director O'Neill, Ms. O'Neill was questioning Nunez about a particular hiring of some related individuals, and Nunez said, Since you're bringing this up, there are concerns about your and General Manager O'Neill's situation, and Ms. O'Neill explained that it was a different situation.

And then later that morning, Nunez brings the matter up

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again, and according to Longoria, Ms. O'Neill became upset at that point—loud, red-faced, et cetera—and further, Armendariz testified that Ms. O'Neill's arrival raised concerns about the open door policy, and the confidentiality of grievances or concerns in the associate resources office.

All of that leads me up to this point: one of the keys to this action being concerted was clearly demonstrated by Armendariz's testimony that the reason she did not take her concerns to the O'Neills—meaning General Manager O'Neill or Associate Resource Director O'Neill—was, and her testimony I believe was, That's why we went to Nunez. She could then take our actions, our concerns, our matters to the O'Neills.

Nunez's [sic] testimony further supports that the action was concerted and protected. She named three managers who had been to her, and she named at least seven employees by name that had been to her with concerns about the O'Neills with the general manager and his wife as the associate resource director, what that relationship did to the policy handbook and to the open door policy.

So I'm fully persuaded that the matter was concerted, that it was protected, and that Nunez was raising these concerns on behalf of others than herself.

Now, going back to the situation between Ms. O'Neill and Nunez on Friday March 8—if I have my calendar dates correct—when the O'Neills and Margaret—what was Margaret's

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last—Longoria was present, there was a discussion about Victor Armendariz, and his relationship—I believe his sister was already working in the facility, and he wanted to transfer apparently from whatever job he had, into the cafe.

And Ms. O'Neill tells Nunez that, You can't have transfers before six months; that this is outlined in the handbook. And Nunez apparently states that this was the position—that is, the cafe position—was the one for which he was hired.

And Ms. O'Neill, Associate Resource Director O'Neill, at that point wants to know why Nunez is being so negative about everything, and why she keeps bringing up this husband and wife management team situation.

Ms. O'Neill then tells Nunez that she, Nunez is the one with the problem about the husband and wife team, and Ms. O'Neill at some point goes to General Manager O'Neill's office and later Nunez is called to General Manager O'Neill's office and at this point, General Manager O'Neill tells her that, This is the third time I've heard this. If I hear it again, I'm going to terminate you. I'm going to terminate you for insubordination. Sarah needs 100 percent your support.

Further evidence of the concerted nature of Nunez's [sic] expressed concerns on the open-door policy, the confidentiality in the associate resources department and the handbook adherence is when she testified—and I credit her testimony on this point—that, I was asked by employees to find out what was

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going on with the open-door policy.

And then later in her testimony, Nunez testified that she did explain back to the employees what had transpired, referencetheir concerns. Simply stated, I concluded that Nunez's [sic] actions were concerted, in that employees—and for that matter, some managers—brought their concerns to her with an eye toward Nunez being—bringing them to management's attention, as I've just previously outlined.

Was this concerted activity protected? Yes, it was, because Nunez was expressing concerns about conditions of employment: specifically three conditions of employment; the open-door policy, that it appears had been in effect at the hotel; confidentiality in the associate resources department; that is, things that were told in the associate resources department were they then going to go straight to the general manager through the associate resource director; and the adherence to the company's handbook, the handbook which addressed, among other items, the issue of relatives and matters of that sort.

I find that the General Counsel has met his initial burden by demonstrating concerted activity that was protected by the Act, known to the Company to be concerted, and that adverse action was taken against Nunez within just a few days after she raised these concerted, protected concerns with management. in that she was threatened, If you don't stop bringing these matters up, I'm

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going to terminate you for insubordination. This is said on a Friday, and on a Monday, a decision is made to terminate that position, and to eliminate Nunez's job.

Now, the burden shifts to the hotel to persuade its affirmative defense that it would have taken the same action, even in the absence of any concerted, protected activity on Nunez's [sic] part. And in that regard, the hotel needs only to establish its defense by a preponderance of the evidence. The hotel's defense does not fail simply because not all of the evidence supports it, or even because some evidence tends to negate its defense.

I am persuaded that cost considerations were a factor for General Manager O'Neill's actions, not only in the decision to eliminate a position in the associate resources department, but in all of his overall considerations for the hotel. I find he had discussed staffing, particularly staffing in the associate resources department, with among others, former general manager Cahill and others even before he arrived on the scene in Midland, Texas.

I go back for a minute to front office manager Almy's testimony, that Cahill—General Manager Cahill—when Cahill was talking to her about trying to get her to take the position of associate resources director, that Cahill told her that during a reorganization she may not need two additional people in the associate resources department.

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Now, I recognize that General Manager Cahill, or former General Manager Cahill denied that such a conversation took

place; I don't know that it's absolutely essential to this case that I make the resolution, but I find such a conversation took place between Almy and Cahill.

But Cahill told Almy that she might decide, after she had gotten into the position, that she didn't need two people to work for her in that department. In fact, Almy said, Well, now I want to make sure that if I take this position, I'm not being hired as a hit person or something to that effect.

Associate Resources Assistant Longoria testified that Nunez had taken on duties that the director of that department would normally perform, and Longoria recognized that in any reorganization by the new general manager, and by the new director in the associate resources department, that her, Longoria's position or some other position in that department might be eliminated.

Now back to General Manager Cahill. She testified and indicated to General Manager O'Neill that he might wish to eliminate one of the three positions in the associate resources department. General Manager O'Neill said, the actions that he took were simply to increase the profitability of the hotel.

Between the testimony of General Manager O'Neill and former General Manager Cahill, it is clear that the levels of staffing in the associate resources department was elevated to

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three because of the high turnover problem in the hotel—this hotel in particular—which in some instances, according to former General Manager Cahill, was running as high as 102 percent, which was explained to me that the same job could be in turnover more than one time during a calendar year.

Cahill thought that two people in the associate resources department was enough, and that's what she had intended to do. She had considered eliminating a position in the associate resources department before she left the scene, but never got around to carrying out that situation.

I am persuaded that the hotel management, General Manager O'Neill in particular would have at some point downsized or streamlined the associate resources department, at which the removal of an employee, or the elimination of an employee position would have resulted in one less employee in the associate resources department.

However, the evidence fully persuades me that the timing of the change and the choice of the position and employee involved was discriminatorily motivated. I base this conclusion, among other considerations on the fact that associate resource director Ms. O'Neill became upset, went to General Manager O'Neill's office in that frame of thought, and General Manager O'Neill summons Nunez to his office and tells her, This is the third time I've heard this—meaning the complaints about the husband-wife team, about the other concerns

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that she had raised—and if I hear it again, I'm going to terminate you. I'm going to terminate you for insubordination; Sarah O'Neill needs 100 percent your support.

Thus, the evidence is persuasive that the timing of the elimination of the coordinator's position in the associate resources department was unlawfully motivated. Simply stated, I am persuaded General Manager O'Neill would not have decided on Monday following his wife's displeasure with Nunez on Friday, to eliminate that position, and that person, the next working day had Nunez not continued to pursue the concerted, protected activities regarding open-door policy, confidentiality in the associate-resources department, and adherence to the hotel's handbook of policy.

Accordingly, I conclude the elimination of Nunez's [sic] position of coordinator in the associate resources department, and hence the termination of Nunez, was motivated in part based on her concerted, protected activity, and her discharge violates Section 8(a)(1) of the Act, and I so find.

With respect to remedies: although I shall order the reinstatement of Nunez. and that she be made whole for any loss of earnings, and that her seniority and other rights be restored, and that her records be expunged of this matter, I leave, necessary, Compliance how long she might have continued to work before a valid streamlining or downsizing action by the hotel might well have eliminated or would

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eliminate a position in the associate resources department, and whether the particular position eliminated would have been the coordinator's position or the assistant's position.

Stated differently, as to how long Nunez would have continued her employment, or if someone else would have been eliminated from the Department, I leave, if necessary to Compliance. I will prepare a notice and attach with my certification of the decision, and direct the hotel to post and abide by that notice.

Madame court reporter, I thank you for taking down the proceeding. I thank each one of you for your presence, and this trial is closed.

(Whereupon, at 11:00 a.m. the hearing was concluded.)

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge our employees for engaging in concerted protected activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Delma Nunez full reinstatement to her former job or, if that job no longer exists to a substantially equivalent job without prejudice to her seniority or any other rights or privileges previously enjoyed; and WE WILL make her whole for any

loss of earnings and other benefits resulting from her discharge less any net interim earnings, plus interest.

WE WILL within 14 days from the date of this order remove from our files any reference to her unlawful discharge, and within 3 days thereafter, notify delma Nunez in writing that this has been done and the discharge will not be used against her in any way.

WEST TEXAS HOTELS, INC., D/B/A MIDLAND HILTON AND TOWERS, A SUBSIDIARY OF MEDALLION HOTELS, INC.